

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

**INQUIRY CONCERNING A
JUDGE, GREGORY P. HOLDER
NO.: 01-303**

**Florida Supreme Court
Case No.: SC02-33**

VERIFIED ANSWER TO NOTICE OF FORMAL CHARGES

COMES NOW, JUDGE, GREGORY P. HOLDER (hereafter "Judge Holder), by and through his undersigned counsel, and files this, his answer to the Formal Charges made against him in a certain Notice of Formal Charges, never properly served upon him in accordance with the mandatory requirements of Rule 6(b), Florida Judicial Qualifications Commission Rules (hereinafter referred to as "FJQCR"), but received by regular U.S. mail on January 9, 2002, and says as follows, that:

1. AS TO THE ALLEGATIONS CONTAINED WITHIN PARAGRAPH 1 OF THE NOTICE OF FORMAL CHARGES:

Judge Holder admits that on or about March, 1998, he was contacted by telephone by then Chief Judge F. Dennis Alvarez, 13th Judicial Circuit, State of Florida, (hereafter, "Chief Judge Alvarez") and invited to attend a meeting with Judicial Qualifications Commission (hereinafter referred to as "JQC") Chairman, Judge Gil Goshorn (hereafter, "Judge Goshorn") and JQC General Counsel, Thomas C. MacDonald, Jr., Esq. (hereafter, "General Counsel MacDonald"). Judge Holder consented to such a meeting and then attended said meeting wherein a St. Petersburg Times newspaper article was discussed. Judge Holder informed Judge Goshorn and General Counsel MacDonald of the context of his comments in the article and Judge Holder's efforts as part of the statewide Dependency Court Improvement Committee, which was then addressing the very legal issue discussed by the St. Petersburg Times article.

Judge Goshorn thanked Judge Holder for his attendance at such meeting and then recommended to Judge Holder that he be more circumspect with respect to his dealings with the press.

Judge Holder further admits that, after the above-referenced meeting, he spoke with then Chief Judge Alvarez regarding the meaning of such meeting; that Chief Judge Alvarez stated categorically that the meeting was absolutely advisory in nature and would always be private and “off the record.” Judge Holder further admits that at no time during the meeting with Chief Judge Goshorn and General Counsel MacDonald, or later during Judge Holder’s conversation with then Chief Judge Alvarez was Judge Holder informed that there had been a complaint filed against him, or that he was “admonished”, or would be “admonished”. Judge Holder further admits that he then understood that the JQC had no such power to “admonish” or levy any punishment against a Judge, as that power had been expressly reserved to the Florida Supreme Court. Moreover, Judge Holder admits that he did not consider informal meetings and/or comments by Judge Goshorn and/or general counsel MacDonald as a substitute for FJQCR 6(b) notice which on or before May 30, 2001 he had not received.

Judge Holder denies each and every allegation in Paragraph 1 of the Notice of Formal Charges not heretofore specifically admitted.

2. AS TO THE ALLEGATIONS CONTAINED WITHIN PARAGRAPH 2 OF THE
NOTICE OF FORMAL CHARGES:

Judge Holder admits that he had several informal conversations with then Chief Judge Alvarez about Judge Holder’s public comment regarding the Florida Judicial Qualifications Commission investigation of then Chief Judge Alvarez. Judge Holder admits that, in very general terms, without naming any specific allegations, then Chief Judge Alvarez mentioned to him that some “colleagues were upset with

Judge Holder;" that although requested by Judge Holder, at no time during any of these conversations which took place in or about 2000 did then Chief Judge Alvarez ever divulge any specific complaints or allegations against Judge Holder, other than those related to then Chief Judge Alvarez's own investigation by the FJQC.

Judge Holder specifically denies that these individual or personal concerns of then Chief Judge Alvarez rose to any level specifically addressed within any reasonable or intelligent interpretation of question "19" of the Application for Nomination as Judge of the District Court for the Middle District of Florida (Jacksonville Division), and submitted by Judge Holder on not only May 30, 2001, but also on January 4, 2000, and May 27, 1999. Moreover, Judge Holder did not consider informal meetings or comments by Judge Alvarez as a substitute for FJQCR 6(b) notice, which on or before May 30, 2001, or since, he had not received.

Judge Holder denies each and every allegation in Paragraph 2 of the Notice of Formal Charges above not heretofore specifically admitted.

3. AS TO THE ALLEGATIONS CONTAINED WITHIN PARAGRAPH 3 OF THE NOTICE OF FORMAL CHARGES:

Judge Holder admits that at some time prior to February 9, 2001, he was telephonically contacted by the then JQC Chairman, Judge James R. Wolf, (hereafter, "JQC Chairman, Judge Wolf") requesting a meeting at the Tampa Airport Hotel on February 8, 2001; that Judge Holder consented to such meeting and the meeting did occur at 10:00 a.m. on Thursday, February 8, 2001. Judge Holder admits that such meeting occurred on February 8, 2001, and denies that any such meeting occurred on February 9, 2001. Judge Holder admits that the meeting of Thursday, February 8, 2001 lasted until approximately 10:20 a.m.,

and that JQC Chairman, Judge Wolf discussed the importance of confidentiality of JQC proceedings and the importance of Rule 23 of the Florida Judicial Qualifications Commission Rules (*i.e.*, "Confidentiality of Proceedings"). Moreover, Judge Holder admits that JQC Chairman, Judge Wolf specifically advised Judge Holder that all JQC matters were absolutely confidential and private, never to be disclosed by anyone, unless and until probable cause had been found by a JQC Investigative Panel, and after service of a written and proper FJQCR 6 notice, affording the judge all appropriate due process and fundamental fairness. Judge Holder admits that he advised JQC Chairman, Judge Wolf that he would follow the advice given him that day by Judge Wolf, as the Chairman of the JQC.

Judge Holder admits that during this February 8, 2001 meeting, he did have an informal conversation with Judge Wolf, lasting approximately one minute, wherein Judge Wolf orally advised Judge Holder that an attorney had complained about the placing of handcuffs by Judge Holder on his office desk during a rather contentious Family Law Division hearing; that during this family law hearing, one attorney had leaned across the hearing room table and accused the other attorney of being a liar.

Judge Holder admits that at the end of this extremely cordial and professional one minute discussion, Judge Wolf advised Judge Holder that this conduct did not rise to any level which would violate any of the Judicial Canons of Ethics, but cautioned Judge Holder to be more circumspect with respect to theatrics in the hearing room.

Judge Holder admits that he did not consider informal meetings or comments by Judge Wolf as a substitute for FJQCR 6(b) notice, which on or before May 30, 2001, or sooner, he had not received.

Judge Holder denies each and every allegation in Paragraph 3 not heretofore specifically admitted.

4. AS TO THE ALLEGATIONS CONTAINED IN PARAGRAPH 4 OF THE NOTICE

OF FORMAL CHARGES:

Judge Holder is without knowledge whether on or about February 13, 2001, JQC Chairman, Judge Wolf, wrote any letter to Judge Holder by Regular U.S. Mail, stating as follows:

“Dear Judge Holder:

This is to advise that the Investigative Panel of the Judicial Qualifications Commission, at its February 9, 2001 meeting, determined that following my conference with you on that date, no further action would be taken **in the complaint filed against you** in the above-referenced matter.”
(Emphasis added)

Judge Holder admits that the first time he was ever allowed the opportunity to review a copy of said letter was at the JQC Investigative Panel Hearing of November 9, 2001.

Judge Holder denies ever receiving any such letter at any time, until an unsigned copy of such letter was faxed to him by JQC Executive Director, Brooke S. Kennerly, pursuant to Judge Holder’s request, on November 13, 2001 (attached hereto as Exhibit “A”).

Judge Holder admits that FJQCR 6(d) as modified and governed by FJQCR 6(b) of the Florida Judicial Qualifications Commission Rules absolutely requires that such notification of an investigation be promptly given to the judge, “personally or by registered or certified mail addressed to the judge at the judge’s chambers or, if returned undelivered, at the judge’s last known address.” Judge Holder admits that the FJQC failed and refused to follow its own rules which were designed to afford the judges of the State of Florida due process and fundamental fairness; that the

failure of the FJQC to follow its own specific rules and procedures has operated to deprive Judge Holder of these same fundamental rights.

Judge Holder denies each and every allegation in Paragraph 4 not heretofore specifically admitted.

5. AS TO THE ALLEGATIONS CONTAINED IN PARAGRAPH 5 OF THE NOTICE OF FORMAL CHARGES:

Judge Holder admits that not only on May 31, 2001, but also on May 27, 1999, and January 4, 2000, he submitted an Application for the Position of United States District Judge for the Middle District of Florida to the Florida Federal Judicial Nominating Commission in which he answered “no” to the following question (“Question 19”):

“Disciplinary matters. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give particulars.”

Judge Holder denies that his ("this") answer was false or misleading. Judge Holder admits that, despite his strict adherence to his judicial training and education and the advice given him by JQC Chair, Judge Wolf during the meeting of February 8, 2001, and General Counsel MacDonald during informal telephonic and personal discussions, the answer given by Judge Holder in response to Question 19 was absolutely honest and faithful. Judge Holder admits that Question 19 called for an affirmative response only in those cases where a court, administrative agency, bar association, disciplinary committee or other professional group had found probable cause against a judge by serving that judge with a written copy of any such “complaint”, and affording the judge the opportunity of due process and fundamental fairness, to review said “complaint” and provide any defenses to such “complaint.”

At the time Judge Holder answered question 19 of the Federal Judicial Nominating Commission Application, he had never received formal notice of an “investigation” of him pursuant to FJQCR 6(b), nor

did he consider “confidential” conversations a substitute for FLQCR 6(b) notice.

Judge Holder admits that his understanding of the meaning of Question 19 is consistent with not only the advice given to and relied upon by him, as referenced above, but also confirmed by the telephonic advice given by General Counsel MacDonald, to Judge Deborah Behnke, Circuit Court Judge, 13th Judicial Circuit, State of Florida (hereafter "Judge Behnke"); that is, or about July 16, 2001, Judge Behnke submitted an Application for the Position of Judge for the Second District Court of Appeal. Question 31d(v) of the Application stated as follows:

“Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint and its resolution.”

Judge Holder admits that Judge Behnke had previously met with the General Counsel MacDonald in the presence of then Chief Judge Alvarez, similar to the meetings of Judge Holder with representatives of the JQC; that although Judge Behnke had also been informed by then Chief Judge Alvarez, that this meeting between herself, then Chief Judge Alvarez, and General Counsel MacDonald, was absolutely private, unofficial, and never to be disclosed, Judge Behnke sought the advice of General Counsel MacDonald concerning her response to this very specific question on her application; that during their telephone conversation, General Counsel MacDonald advised Judge

Behnke that her JQC meeting was absolutely private and never to be disclosed, and that Judge Behnke should specifically answer Question 31d(v) as follows: “There has never been a probable cause finding.” Judge Behnke’s followed JQC General Counsel Thomas MacDonald’s advice. Her response to Question 31d(v) is attached hereto as Exhibit “B.”

Judge Holder respectfully admits that Richard C. McFarlain, Esquire serves as both a member of the Florida Federal Judicial Nominating Commission and the Florida Judicial Qualifications Commission. As such, Mr. McFarlain had full access to all JQC records and was fully apprised of Judge Holder's unofficial meetings with the JQC Chairmen in both 1998 and 2001. Moreover, Judge Holder, as a part of his three (3), past submitted applications for the position of United States District Judge for the Middle District of Florida to the Florida Federal Judicial Nominating Committee, executed a full and complete waiver of confidentiality which read as follows:

I hereby waive any privilege of confidentiality I may have concerning information which the Commission may desire to obtain from any source concerning my qualifications for judicial office. I specifically authorize all institutions, organization, schools, physicians, hospitals, and individuals to make available to the Commission any information concerning me which the Commission may request.

Thus, Mr. McFarlain had Judge Holder's full consent and authority to disclose any information concerning Judge Holder to the other thirty-eight members of the Federal Judicial Nominating Commission. Moreover, had Judge Holder divulged these very informal private "chats" which took place in 1998 and 2001, according to the advice given him by JQC Chairman, Judge Wolf, Judge Holder could have been charged with a violation of the Florida Code of Judicial Conduct.

The apparent conflict and confusion regarding such ambiguous application questions was noted with grave concern by Thirteenth Judicial Circuit Chief Judge, Manuel Menendez, Jr. (hereafter, "Chief Judge Menendez") in his January 4, 2002, correspondence to the Chair of the Florida Judicial Nominating Procedures Committee (attached hereto as Exhibit "C"). In this correspondence, Chief Judge Menendez expressed his concern concerning the apparent confusion and perhaps conflict between FJQCR 23(a), and

FJQCR 6(b). In the case referenced by Chief Judge Menendez, the Judge had received a FJQCR 6(b) Notice of Investigation. Chief Judge Menendez noted that the Chairman of the FJQC apparently shared his concern regarding this conflict.

Judge Holder denies each and every allegation in Paragraph 5 of the Notice of Formal Charges and not heretofore specifically admitted.

6. Judge Holder denies that any of the alleged conduct set forth within the Notice of Formal Charges, not yet properly served upon him, constitutes a violation of Canon 1 or Canon 2 of the Florida Code of Judicial Conduct and demands strict proof thereof.

AFFIRMATIVE DEFENSES

(A) The Formal Charges as written and set forth in the Notice of Formal Charges have never been before the Investigative Panel for proper disposition nor was Judge Holder formerly notified of such charges in accordance with FJQCR Rule 6(b). More specifically, the FJQCR 6(b), **Notice of Investigation**, served upon Judge Holder on October 22, 2001, stated as follows:

This inquiry is based upon the following allegations:

On or about May 30, 2001, you submitted an application for the position of United States District Judge for the Middle District of Florida in which you answered “no” to the following question:

Disciplinary Matters. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give particulars.

This answer was false or misleading because on two previous occasions you have personally met with the Chairman of this Commission to be admonished concerning your conduct as a result of **complaints filed against you by this Commission**. [emphasis added].

Paragraph 5 of the Notice of Formal Charges states, in pertinent part, as follows:

This answer was false or misleading in view of your two previous meetings with chairmen of the JQC to be admonished concerning your conduct as a result of the **complaints made against you to, or by, the JQC. . . .** [emphasis added].

No further identification or description of any such complaints was made, explained or set forth.

As to these additional “complaints” charged herein, Judge Holder was never noticed pursuant to Rule 6(b) (*i.e.*, “shall be given”) “personally or by registered or certified mail addressed to the judge. . . .”

(B) Estoppel. The JQC Hearing Panel is estopped to assert a claim against Judge Holder, pursuant to Rule 6(b), where the JQC Investigative Panel has failed to properly notify Judge Holder of its investigation before it determines there is probable cause to initiate formal charges and its investigation, and affording Judge Holder a reasonable opportunity to make a statement before the Investigative Panel personally or by the judge's attorneys, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct.

(C) The allegations within the Notice of Formal Charges, and the facts presented, do not constitute a violation of the Canons of the Code of Judicial Conduct, do not constitute conduct unbecoming a member of the judiciary, do not demonstrate unfitness to hold the office of Judge, nor warrant any discipline whatsoever in this cause.

GREGORY P. HOLDER

Circuit Judge, Thirteenth Judicial Circuit
Respondent

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing Verified Answer to Notice of Formal Charges was sworn to and acknowledged before me this _____ day of February, 2002, by Judge Gregory P. Holder, who is personally known to me.

Madalene E. Youngblood
Notary Public
My Commission Expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Answer to Notice of Formal Charges together with diskettes (3 ½") containing copies of this document in WordPerfect format has been filed with the Clerk of Court, Supreme Court of Florida, 500 S. Duval Street, Tallahassee, FL 32399-1927; and that a true and correct copy of the foregoing has been furnished by U.S. mail to: Honorable James R. Jorgenson, Third District Court of Appeal, 2001 S.W. 117th Avenue, Miami, FL 33175-1718; Dale R. Sanders, Esquire, Vice Chairman, Florida Judicial Qualifications Commission Investigative Panel, 1110 Thomasville Road, Tallahassee, FL 32303; John D. Jopling, Esquire, Special Counsel to the JQC, 203 N.E. First Street, P.O. Box 850, Gainesville, FL 32602; John R. Beranek, Esquire, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, FL 32302-0391; and Brooke S. Kennerly, JQC Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303, this ____ day of February, 2002.

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